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BEFORE THE FEDERAL ELECTION COMMISSION

1992-5 AM 11:54

In the Matter of

National Republican Senatorial Committee  
James L. Hagen, as treasurer

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**EXECUTIVE SESSION**  
MUR 2314

**SENSITIVE**

**JAN 12 1993**

GENERAL COUNSEL'S REPORT

- I. BACKGROUND (The General Counsel's Supplemental Brief dated August 13, 1992, is incorporated by reference into this report.)

On March 10, 1992, the Commission found probable cause to believe that the National Republican Senatorial Committee ("the NRSC") and James L. Hagen, as treasurer, had violated 2 U.S.C. § 434(b) and 11 C.F.R. § 110.6(d)(2) by failing to report as contributions from itself \$71,627.33 in earmarked contributions transmitted to Jim Santini for Senate through the NRSC's 1986 Direct-To operation, and by failing to report as contributions from the NRSC \$32,575 in earmarked contributions transmitted to Jim Santini for Senate by means of NRSC checks through the committee's Majority '86 operation. The Commission also found probable cause to believe that the NRSC and James L. Hagen, as treasurer, had violated 2 U.S.C. § 434(b) and 11 C.F.R. § 106.1 by failing to report as contributions to Jim Santini for Senate unreimbursed costs related to unsuccessful solicitations for the portion of the NRSC's 1986 Direct-To Auto program which solicited contributions to the Santini campaign, and solicitation costs for the Direct-To and Majority '86 programs related to contributions which were successfully redesignated to the Santini campaign, but

not including the unsuccessful costs of general party fundraising in programs where the contributors were called back. Further, the Commission found probable cause to believe that the NRSC and Jim Hagen, as treasurer, violated 2 U.S.C. § 441a(h) with respect to the above unreported contributions.

Following the Commission's approval of a proposed conciliation agreement on April 28, 1992, this Office notified counsel of the Commission's determinations by letter dated May 5, 1992. On May 20, 1992, counsel requested copies of the certifications of all Commission votes in this matter. On June 30, 1992, the Commission voted to approve the release of these certifications, with the deletion of all vote counts and names of Commissioners.

On June 18, 1992, this Office received from counsel a second letter in which he cited the decision of the United States Court of Appeals for the District of Columbia Circuit in Federal Election Commission v. National Republican Senatorial Committee, No. 91-5176, (D.C. Cir. June 12, 1992) ("FEC v. NRSC") and in which he asked that the Commission either take no further action in MUR 2314 or vacate its probable cause to believe determinations and reinstate the briefing requirements of the Federal Election Campaign Act.

On August 13, 1992, this Office sent to counsel a Supplemental Brief which addressed the court's decision in FEC v. NRSC and its relationship to the issues in MUR 2314, and which recommended that Respondents' requests for the Commission to take no further action in this matter or vacate its probable cause determinations be denied. (See General Counsel's Report dated

August 13, 1992.) Respondents were offered the opportunity to file a response to the General Counsel's Supplemental Brief.

On September 22, 1992, counsel wrote to this Office reiterating his clients' request that the Commission either take no further action or vacate its probable cause finding prior to reinstating the briefing process. He also asked for certifications of all Commission actions in this matter including vote tallies. On November 10, 1992, the Commission voted to deny these requests, but to grant the Committee fifteen days to file a responsive supplemental brief. This Office was directed to inform counsel that the Commission would consider, after the Committee's Supplemental Brief had been filed, whether or not to vacate the probable cause finding as it relates to the direction or control issue in this matter. A letter to this effect was sent to counsel on November 18, 1992. (Attachment 1).

On December 15, 1992, counsel responded to the November 18, 1992, letter from this Office. (Attachment 2). In this letter counsel implicitly declines to file a supplemental brief. Instead, counsel restates earlier objections to certain Commission procedures

He goes on to state that the "NRSC expressly reserves the right to challenge any and all administrative procedural deficiencies in this matter. In addition, NRSC reaffirms its position on the merits that, for the reasons stated in its numerous pleadings and as further explicated in FEC v. NRSC, it has not violated the Act." (Emphasis in original.)

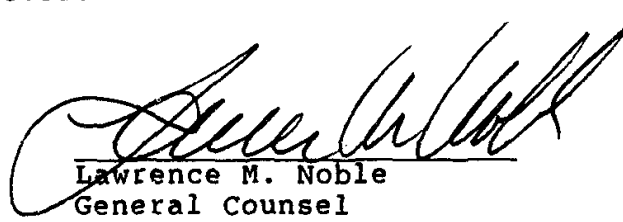
Given Respondents' failure to file a response to the General Counsel's Supplemental Brief and rejection of all parts of the proposed conciliation agreement, including the issues of unreported and excessive contributions arising from solicitation costs as well as from any direction or control of contributions, further attempts to reach a mutually agreed upon settlement of this matter would appear to be fruitless. Therefore, this Office recommends that the Commission deny Respondents' request to vacate the probable cause findings in this matter and authorize the Office of the General Counsel to file a civil suit for relief in the United States District Court against the National Republican Senatorial Committee and James L. Hagen, as treasurer.

II. RECOMMENDATIONS

1. Deny counsel's request to vacate the probable cause findings in this matter.
2. Authorize the Office of the General Counsel to file a civil suit for relief in United States District Court against the National Republican Senatorial Committee and James L. Hagen, as treasurer.
2. Approve the appropriate letter.

Date

1/4/93

  
Lawrence M. Noble  
General Counsel

Attachments

1. Letter from the Office of the General Counsel dated November 18, 1992
2. Counsel's letter dated December 15, 1992

Staff Assigned: Anne A. Weissenborn